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New Technology: a Catalyst for Crises in Collective Bargaining, Industrial Discipline and Labor Law

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Abstract

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KEYWORDS: technology, labor, law

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A Personal Account of *Williams v. Pacific Maritime Association and International Longshoremen's Warehousemen's Union**

Stan Weir**

Eighty-two San Francisco longshoremen, myself among them, were fired from their jobs on the same day in 1963. The purpose of this article is to report from a participant's viewpoint this event; the events leading up to this mass firing; its context in the automation of the longshore industry; and the subsequent litigation, lasting until 1981, which was generated by these discharges.

I. The Firing

While we longshoremen who were the objects of these firings were at work on June 19, 1963, letters were delivered to each of our homes. They contained notices that we had been "deregistered" (discharged) as full-time employees of the Pacific Maritime Association (PMA), an employers' association. Somewhere in the port of San Francisco in the preceding weeks we had been tried, found guilty and received the maximum sentence—economic capital punishment—all by secret process. These events resulted in the first mass firing of longshoremen represented by the International Longshoremen's and Warehousemen's Union (ILWU) since that union was founded in the general west coast maritime strikes of the 1930s. It also marked the first time that the ILWU had ever been party to the discharge of dock workers.

*384 F.2d 935 (9th Cir. 1967), *cert. denied,* 390 U.S. 987 (1968) (reversing summary judgment for defendants and ordering trial); 421 F.2d 1287 (9th Cir. 1970) (sustaining trial court rulings dismissing individual defendants and claims for punitive and exemplary damages); 617 F.2d 1321 (9th Cir. 1980), *cert. denied,* 449 U.S. 1101 (1981).

**Publisher Singlejack Books, San Pedro CA. Former Instructor, Labor Education Programs, Univ. of Illinois.

Written under the letterhead of the Joint Port Labor Relations Committee (JPLRC) of the PMA-ILWU, the identical and unsigned discharge letters did not specify charges. Instead, they told us only that the firings had been accomplished "pursuant to the provision of #9 of the 'Memorandum of Rules Covering Registration and De-registration of Longshoremen in the Port of San Francisco. . . . Such de-registration was based upon the determination of the Committee that you have violated the applicable rules." Upon studying this provision, we discovered that it contained a list of all the "applicable rules," ten of which outlined specific violations; the eleventh, and last rule, allowed the governing parties to fire "for any other cause." This failure to specify charges was a violation of the Memorandum of Rules which contained in its text a model of the letter to be sent as notice of de-registration. In the appropriate position on the model was a blank space under which were the instructions, "Here list the charges."

In addition to this omission, the joint committee's letter of June 19, 1963 addressed to each of us read:

> In the event that the Joint Labor Relations Committee receives within fifteen days after the date of this letter, a detailed written statement signed by you, satisfactorily demonstrating that there is no ground for your de-registration, and requesting a hearing, you will be given a hearing, at which time you may show cause, if any you have, why such de-registration should be rescinded.

Even had we been willing to endure the submission, it was impossible for us to write demonstrations of our innocence as asked, or in any other form, for we were denied a list of charges. The ILWU had a national reputation as a progressive union yet every concept of democratic due process was being violated. There was no precedent for what was happening to us and, although we knew that the rank and file exercised limited power, we were witnessing a complete reversal in the basic role of a union. This was not the result of some veiled form of gradual bureaucratic drift; the top officialdom of the ILWU was collaborating with employers, literally doing management's job out in the open by institutionalized means. The joint parties to the collective bargaining agreement obviously felt free to select victims and then design new rules to dispose of them in brazen disregard of long-established procedures.

At least twenty-five of us who received the deregistration notices responded by asking for an immediate hearing. All requests were

granted and appeal hearings were set for July 9, 10, and 11, 1963, in the cargo shed on Pier 24 of the Embarcadero in San Francisco. Our attempts to learn the charges and prepare a defense continued to prove futile. Union officials would not meet with us or answer our phone calls, registered letters or telegrams. A state of confusion, with many conflicting rumors, existed within the general membership of ILWU San Francisco Local 10. The joint committee had accomplished the firings without making the identities of the victims known to the rest of the bargaining unit. Since the rank and file were no more organized than we there was no vehicle for communication between them and those who were terminated.

In an effort to exhaust all possibilities, on July 7, I sent the following telegram to R.R. Holtgrave, then Secretary of the JPLRC, with copies sent to ILWU International President Harry Bridges and PMA President Paul St. Sure:

> RECEIVED YOUR LETTER NOTIFYING ME THAT I AM TO HAVE HEARING JULY 11TH. I WILL BE PRESENT BUT YOU HAVE NOT YET TOLD ME THE CHARGE YOU INTEND TO TRY ME FOR. I AGAIN REQUEST YOU SO INFORM ME AND NOT FORCE ME TO APPEAR WITHOUT PREPARATION.

Holtgrave's answer by return wire on July 9th, became the one break in the official silence that lasted until the opening day of the hearings. It read:

> YOUR UNION IS YOUR EXCLUSIVE BARGAINING REPRESENTATIVE ON YOUR GRIEVANCE. UNLESS YOU INTEND TO PROCEED INDEPENDENTLY WITH THE EMPLOYERS UNDER SECTION 9 OF THE NATIONAL LABOR RELATIONS ACT YOU SHOULD CONSULT WITH YOUR UNION REGARDING THE HEARING.

Section nine of the amended National Labor Relations Act, commonly known as the Taft-Hartley Act, allows employees to bypass their union and to process their own grievances with management on an individual basis. This was of no use to us because our fight was to get union representation, not get away from it; to get collective protection and put an end to the vulnerability we were experiencing as individuals. In a last ditch effort just hours before the appeal hearings, I sent a copy of Holtgrave's wire to Local 10 President James Kearney along with an appeal for representation and the provision of charges. Even though

Holtgrave's response designated the union as the terminated dock workers sole legal representative, I received no reply.

On each of the hearing days the scene in the waiting room outside the makeshift hearing chambers on Pier 24 had a "death row" atmosphere. We gathered by numbers as instructed and awaited our turns. None of us was broke or broken, but the experience was taking its toll. There was none of the good humored banter that is commonplace at dock worker gatherings. We had all now experienced unemployment for three weeks. It was futile to file new job applications without listing our employer for the previous four years. The PMA had denied our unemployment insurance claims on the ground that we were "voluntary quits," that is, we had followed a course of conduct that we knew could end only in termination of employment. There was a silence among all of us at the hearings because the futures of whole families were about to be determined. Many of us could not expect to ever again find employment that equaled our chosen occupation. Ninety percent of our number were black. They, and others as well, faced the specter of returning to their marginal jobs of pre-waterfront years. We too had temporarily withdrawn to that "low" which is the hope for individual escape.

The door to the hearing chamber opened. A sergeant-of-arms stuck his head out and called a name. One of our men answered, rose stiffly and went inside. The door opened again a few minutes later and another name was called. But what had happened to the first man? It wasn't hard to make an accurate guess. As each hearing concluded the appellant was being ushered out a rear exit, down an alternative stairway and off the pier. For us, the contrivement exposed the true nature of the hearings and made us angry. When my turn came I entered and took the lone chair facing the judges on the other side of the long table. Local 10 President James Kearney and business agents Joe Perez and Dick Harp nodded hello to me but R. R. Holtgrave of the PMA and his two assistants did not look up from their papers. These six comprised the Joint Port Labor Relations Committee (JPLRC). It was they who had signed the official deregistration notices. Now they were acting as their own appellate court.

The biggest unknown for me, in that room at that point, was the presence of eight or nine other men. The man in the bow tie seated at the center of the table I guessed to be Richard Ernst, head counsel for the PMA. The younger man next to him was obviously an assistant. In the next seat was Tommie Silas, formerly a local union business agent with a longtime reputation as an errand runner for Harry Bridges.

Both Silas and the other former Local 10 official next to him had stacks of paper in front of them, but Kearney and the other union officials did not have a scrap. Clearly, it was Silas and his colleagues who were being cast in the role of prosecutors yet they held no elected office. Where did they get the authority?

My memory began to provide some possible explanations. These men were members of the Joint B List Committee who five years earlier had processed our applications and interviewed us along with about seven hundred others who were being recruited to the industry. The formation of this committee was viewed by some longshoremen as a defeat for Local 10. Previously, from the beginning of the union, Local 10 had held substantial control over entry to employment in the port. With the establishment of the Joint B List Committee, control over hiring was now in the hands of the employers and the leadership of the international union. I surmised that the B List Committee must have been the body that tried us in secret and decided to discharge us. In process were the beginnings of a move by the international union to essentially eliminate Local 10's control of the grievance procedures by which firings had been held to a minimum. Local 10 President Kearney had thus far refused to make an issue of it before the rank and file. To avoid open battle he was rubber stamping the victories of the PMA. The mass discharge was going to remain a smokescreen for a continued power grab, as will be seen later in this text.

JPLRC Secretary Holtgrave confirmed my chain of deductions. In his role as hearing chairman he read to me from a list of rights and instructions for appellants and stated that I was not to be allowed counsel, the right to face accusing witnesses, nor the opportunity to produce witnesses in my own behalf. I would be informed of the general area of the rule infraction that I had committed, but I could only learn the exact detail of the charges by going to the Joint PMA-ILWU Records Office two weeks later. The chairman concluded his instructions to me with a statement to the effect that I was now free to make any defense in my own behalf that I deemed appropriate. I questioned Holtgrave and learned that the committee was going to make its final judgment before we had the opportunity to learn the exact nature of the charges in the Records Office and none of the signatory judges would be present at that time to hear our defense. Holtgrave then turned the hearing over to Silas who quickly stated that over a four-year period I had falsified entries on job dispatch records to give me more hours of work than I would have received had I not, in effect, crowded into line ahead of co-workers during the daily hiring process. I

countered that his allegations were false. It was my word against his and the only evidence of my innocence was the forms on which I had allegedly made dishonest entries. Not surprisingly, they had somehow been destroyed.

I warned all present that we would not submit to this frame-up silently. I rose to leave but before I could reach the exit door the assistant PMA attorney called me back. He had a set of questions designed to get me to say that I considered the discharge action a form of discrimination according to Section Thirteen of the union contract. That section established an exclusive grievance procedure for anyone who claimed he had been discriminated against for racial, religious, or other reasons. The assistant PMA attorney's attempt to curtail our ability to file suit in civil court failed. During a trial in federal court eleven years later, this same man would be one of two former PMA attorneys to testify in the plaintiff's behalf.

On the night of July 11, just three hours after the hearings concluded, President James Kearney called a regular business meeting of Local 10 to order. He then made a motion which demanded that the eighty-two men who had been fired for alleged falsification of job dispatch sign-in sheets be returned to their jobs at once. Even if finally proven guilty, thirty or more of the men who had been fired would have been first offenders. The rules called for discharge only on the third proven offense. A second motion was immediately made from the floor by Hal Yanow, a former bodyguard of Harry Bridges. It demanded that those of the eighty-two men who were fired for paying their dues late eight times or more during their four years of employment be reinstated because there was no rule in existence which made that a disciplinary offense. All the men in question had each paid the standard one dollar fine for each day they had paid late and none were in arrears at the time of discharge. Many of those sitting in that meeting could probably have been terminated under this very same rule. The recorded minutes of the July 11, 1963, meeting show that both motions passed by an "overwhelming majority."

Kearney presented these motions at the next meeting of the JPLRC. The PMA contingent voted "nay." Due to the ensuing deadlock the motions were passed up to the next organizational level, the Area Labor Relations Committee, for a decision. A member from each side of that joint committee was present. They called themselves to order and Local 10's motions were denied. With that vote, Local 10's short and concerted effort to save us was dead.

About ten days later we lined up in front of the Joint Records

Office. We wanted to exhaust every possibility for learning specifically the charges against us. Our efforts produced little more information than we already had. B List Committee members, one from each side, were present to confront us with our supposed rule violations and another stalemate ensued. They still were unable to present us with any evidence of record falsification and insisted on their right to apply retroactively the heretofore unheard of rules that had put us all in double jeopardy.

Several days later we began to hear conflicting rumors from the waterfront. We had heard that two of the firings had been rescinded and that there might be an extension of the appeals procedure. Approximately twenty-five of us gathered to talk over what had happened. As a result of that meeting we sent a delegation to the PMA headquarters to learn if any further appeals were possible. The answer was no. This response and the lack of rank and file support demanded that we make a decision, either to drop the whole matter and walk away or resort to the courts. Few of us felt there was really a choice. Most had relatives still working on the front. We were determined to prove our innocence and we knew that without jobs as longshoremen, many of us would be demoted to poverty level incomes. Before relating a short history of our seventeen-year legal battle it is necessary to provide some of the historical background for the discharges and their direct relationship to the employers' present and planned investments in mechanized and computerized cargo movement machineries.

II. Historical Background

The first clarification that must be made is that the eighty-two men fired in 1963 were not members of the ILWU. We worked under its jurisdiction, but by agreement between the PMA and the union we were not allowed to join. We were "B" men, part of approximately 750 men who began work on the San Francisco piers in 1959, eventually known as the '59 men so that differentiations could be made as more "B" men were brought into the industry in 1963, 1965, 1967 and 1969. The San Francisco '59 men were the first to enter the shipping industry in that port without membership in the ILWU since the formation of the union. In effect, we were second class citizens.

Earlier, in 1934, west coast longshoremen had established the most complete form of rank and file control over the daily hiring process known to waterfronts around the world. As a result of an arbitration award in 1934 by the Franklin Roosevelt administration's National

Longshoremen's Board, longshoremen in each port took virtually total control of recruitment in the industry. The local unions, rather than the shipping companies, began to issue work permits to new longshoremen. In San Francisco, "permit men" quickly became probationary members of the union and at the end of a six month period they became eligible for full union membership. After their formal induction into the union, local union officials applied for and routinely obtained registered status for them. This procedure involving a substantial form of workers' control was weakened during World War II and came under full attack in the 1950s with the introduction of new technology.

In 1952, top military transportation authorities, acting under the auspices of the National Academy of Sciences, began to urge the nation's ship operators to jettison traditional man-handled or by-the-piece cargo operations in favor of new methods utilizing large metal containers moved in and out of new type vessels by giant cranes or on truck trailers. As the first containership was being introduced in the Pacific trade by Matson in 1957, the waterfront employers went to ILWU President, Harry Bridges, with a proposal for a new method of recruiting longshoremen. They wanted a pilot program that would take control of that process from the rank and file and place it in the hands of the top officials. After several attempts, Bridges was able to overcome rank and file resistance to the program and implemented it the following year.

During 1958, the appointees to the B List Committee screened over ten thousand applicants and made selections for employment. In June and August of the following year, over seven hundred of these applicants went to work as full time hold-men, those who work inside the hatches of the ships in port. The conditions of their employment were new and in many ways consistent with the "B" label. Not only were they denied membership in the union, but in order to attend union meetings they had to sit in a segregated section of the balcony in the meeting hall.

It is hard to imagine a more restrictive definition of "permanent status" employees than the one applied to us as '59 B men. It did not matter that our incomes were often less because we got the work that was left after the A men (union members) took their pick of the jobs available each day. If we took a second or part time job outside the industry—or enrolled in a school—we were subject to deregistration. We received the same basic pay as the A men, but in other conditions of employment there were substantial dissimilarities. The inability to participate in the election of union officials, for example, meant that we

too often worked without the benefit of on-the-job union protection. This arrangement was formalized by the creation of an especially stringent set of disciplinary rules for governing our conduct. At the same time, there was no limitation put on the time we had to serve before getting union membership and A status, even though we had been promised that "graduation" would occur within a year, at maximum.

The official reason which circulated around the waterfront for the creation of a B category of longshoremen was that most of the "old-timers," who were registered prior to 1948, found hold work difficult. In their advancing middle age they had taken the less physically arduous jobs on deck and dock. This meant that in the years just prior to the recruitment of the B workers, most of those doing hold work were hired off the street on a daily basis. The recruitment of a new cadre of hold men was a necessity for the employers but there was a problem. The planned container technology soon to be introduced would eliminate thousands of jobs in a few years. It would be difficult to lay off "recent hires" if they had a voice in the union. The B list program was the attempted solution to the employers' dilemma.

The program had additional dividends for the employers. It performed the function of splitting the work force, which would be particularly valuable if resistance to the introduction of new technology developed. There was also another factor which also cannot be overlooked; on the Pacific Coast waterfronts and around the world, hold workers are traditionally the most militant section of the labor force. Not only are they the youngest and most active, they comprise the tightest unit within the total longshore gang operation because they work deep in the hatch where entry by supervisors can involve some risk.

The '59 B men came to the waterfront at the time when the first mechanization and modernization (M&M) collective bargaining agreement was being negotiated. It was ratified by the A men on a coastwide basis in 1960 and went into effect in early 1961. Bridges had made a bargain in which most of the work rules won by the union in the 1930s were sold in return for the creation of a special money fund. It gave all A men retiring at age sixty-five a bonus of seventy-nine hundred dollars or the bonus could be used by those who wanted to take early retirement.[1] Thus, the disappearance from the front of the generation which had built the union was hastened.

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1. In the second six-year mechanization contract which went into effect in 1966, the bonus was raised to $13,600.

In 1960, the port of Los Angeles was the second largest on the west coast. Its ILWU Local 13 organized the strongest resistance to this agreement and was the only local whose majority voted against the contract. The local came under hard attack. A popular business agent was fired after representing men involved in a stop work action. Bridges negotiated a special and more restrictive version of the mechanization agreement for that port and subsequently a majority of Local 13 approved it. Short of waging an all-out rebellion, they had no choice. We in San Francisco were unaware of any resistance in Los Angeles until we found ourselves working cargoes originally destined for that port.

In San Francisco, the only group resistance to this agreement, however modest, came from the B men. During the long negotiation period, we badgered A men informally on the job about the concessions that Bridges was making to the employers. The resentment among us became very apparent in the early months of 1960. True to its word, as soon as we had put in six months on the job, Local 10 formed its investigating committee and began to process us for membership. They were stopped by higher level authority within management and the union. The freeze on A registrations was rationalized because the automation of the industry was just ahead. Many jobs would be eliminated and the jobs of even senior men were in jeopardy in certain ports. The men in those ports with high seniority had a right to move to ports not yet "distressed." They took precedence over B men. Our admission to the union and registration as A men would have to wait until the impact of containerization was studied on a coastwide basis.

The top officials of the local and many rank and file members expressed deep doubts about these delays. There was talk that the international union and the PMA were using automation as an excuse to encroach upon the rights of the local. Fear of the effects of the coming containerization was running high but it was hard for many of the workers to suddenly develop a distrust of Bridges. He regularly came to local meetings and talked as though the introduction of the new technology and a resolution of the B men's concerns, was months instead of years ahead. Over half of the membership of Local 10 were black men. In vast majority they had come to the Bay area in search of jobs at the outbreak of World War II. Circumstances had led them into longshore work. Unlike the experience of many of their friends who entered other industries at that time, the ILWU did not segregate its black workers into "colored" locals and for them Bridges symbolized that positive experience. It was extremely difficult for them to now believe that this same man was manipulating them.

Not long after the freeze on A registrations and union membership, the executive board of Local 10 passed an unexpected motion which urged that the B men elect representatives to the executive board. At the next B men's meeting, three representatives were elected. I was one of them. All three of us openly expressed our own feelings, and those of the men who had elected us, against the mechanization agreement. We were under full attack the moment we arrived at our first board meeting. What some members called the "Bridges group," led by International Representative William Chester, raised so many objections to our presence that no business could be conducted. Several months later two of the B representatives, William Davis Edwards and Robert Marshall, were fired.

On the first day that the mechanization agreement went into effect, hold men found themselves working sling loads of hand-handled cargo that were double or more the weight of those that had been hoisted in and out of hatches the previous day. Thus, the elimination of the work rule that had for twenty-five years limited man-made sling loads to 2,100 pounds was the first change to be felt. Other work rule losses were experienced in turn. Principally among these was a rule the longshoremen had won in order to protect the autonomy of each work gang. The rule denied walking bosses the right to fire individuals from gangs and make those who replaced them work short handed; thus eliminating the employer's ability to single out so-called troublemakers. "If they want to fire one of us they will have to fire us all", had been the 1930s approach to the problem. The new agreement circumvented the rule by cutting the number of hold men in a gang from eight to four. Eight men were still required on hand stowage operations so half that number were dispatched to the gangs with the artificial label of "swingmen" who could then be fired singly.

While these changes in the relations between supervisors and workers on the job were being made there was little change in the nature of cargo handling methods. Despite the negotiation of a so-called "automation" contract in 1960, the mass introduction of container technology, as some had suspected, did not occur until the late 1960s. For half a decade employers were able to run hand-stow and discharge operations, virtually free of work rules. Production almost doubled. Thus, the longshoremen were directly subsidizing the purchase of the very machines that would kill over half their jobs by 1980.[2]

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2. As of 1982, there were less than eight thousand active registered longshoremen working on the west coast of the United States.

As productivity climbed, so did accident rates. Between 1958 and 1967, U.S. waterfront employers reported a 92.3 percent increase in the number of workers' compensation cases "despite efforts to engineer problems out of the workforce."[3] This condition increased their open lobbying of the A men for entry into the union, but the long and gradual growth in their boldness was reversed in one night by Harry Bridges. The founding president of the ILWU addressed a compulsory meeting for B men in early 1962. His blunt speech climaxed with the statement that "[we B men] were getting black marks all the time and not just from the employer side." Minutes later Bridges returned to the microphone and announced that the B men no longer had any representatives of their own because "we are representing you," and added that if we wanted responsible advice we should seek counsel from a B man and close friend of his, Pat Tobin (later to become the ILWU representative in Washington, D.C.). Local 10 vice president Walter Nelson chaired the meeting and was the only local union official present. He heard Bridges totally wipe out the representation of B men on the local's executive board. The international union had just violated the local union's autonomy, yet Nelson made no challenge and the meeting adjourned.

For the next six months there was far less communication between A and B men on the job. The silence of the B men was so sustained that probably it was construed as a threat. Informal pressures were being felt off the job as well as on. Waterfront talk that originated in official circles had already made it clear that the cargo movement needs of the war in Viet Nam were sustaining shipping activity at high levels and that rapid attrition in the ranks of A men had pushed their average age to fifty-six. Late in 1962, Harry Bridges went to a Local 10 membership meeting to announce that he had a "Christmas present for the B men." There was applause. Many A men had sons, nephews or relatives on the B List. Bridges climaxed his speech with the promise that sometime early in 1963, the B men would be promoted to the A list. He added that a new B list would be recruited to take their place. The audience's mild elation disappeared with that last bit of news; there were groans but no formal objections.

Regardless of the seeming good humor with which Bridges made the "promotion announcement," the development presented his leader-

3. Paper by T. H. Bryans, "The Australian Waterfront Labor Scene," No.15, p.14, delivered at the International Container Terminal Operators Conference, Oakland, CA. (October 1979).

ship, its supporters in Local 10 and the employers, with the potential of a deep threat. Over five hundred new members would enter the headquarters port of the ILWU at one time, all with strong voice and vote. These men had already shown a willingness to attend local business meetings in large numbers even though they had been relegated to segregated balcony seating. Unlike so many of their elders, they were not awesome supporters of the union's international president. For almost four years they had watched Bridges attend meetings in which he personally frustrated the efforts of rank and file A men to bring B men into the union. An important and additional crisis factor existed because the participation of A men in union meetings had dwindled with their advancing age, to the extent that the meeting quorum was reduced to four hundred. Enfranchising the '59 B List meant that all of Local 10's long-established power relationships were about to be changed. The men who governed the industry were faced with a whole series of unknowns. The Bridges leadership and the employers had the choice of either letting democratic processes naturally determine the course of change or to intervene. They chose the latter.

Harry Bridges attended another Local 10 membership meeting in early 1963, during which he announced the near finalization of plans to open A registrations or "remove the freeze." But he concluded by revealing that there were about a hundred "troublemakers" among the B men who would have to be eliminated from the industry altogether. Previously the plan had been to hold any workers who did not meet existing membership standards in B status for a penalty period. But this action was not even contemplated since none among the B men was awaiting disciplinary trial for any alleged infractions. Bridges' proposal was booed and openly rebutted from the floor. It was probably right after this rejection of Bridges that the three top officials of Local 10, headed by James Kearney, made plans to induct the nearly four hundred B men who had already been processed by the local's own Investigating Committee. Two weeks later they did just that over Bridges' objection. When the ceremony ended, Bridges took the microphone to state that the A registrations of those just initiated would be held up. The secretary-treasurer of the local, Reino Erkkila, was outraged and announced that he had only that day seen, in the PMA offices, the signed and completed registrations of the men who had just taken oath. Bridges returned to the podium once more to state that that action could be "reversed." The next morning the new members of ILWU Local 10 were dispatched to the job as A men. By noon the word spread around the front that their registrations had been rescinded.

The rumor proved true. The next day they were returned to their jobs as B men.

Bridges went back to the local membership for a second try in May. He presented a motion that would allow some higher authority to fire a hundred or so "troublemakers". In support of his own motion he urged that those present not allow "a few to stand in the way of the many." Everyone knew what he meant. Over four hundred were to be denied A status until the membership allowed him to fire four of five score unnamed but already marked men. The motion passed. Hal Yanow jumped to a floor microphone and called attention to the union's flag in its stand behind Bridges' chair. In six-inch gold letters across its breadth was the statement: "An injury to one is an injury to all." Yanow was one of the handful who understood that there are no rainchecks in the fight against injustice.

It is doubtful that more than a few longshoremen were yet aware that the B List Committee was the administrative vehicle for carrying out Bridges' motion. There was a perception that Bridges now had the power to fire whomever was on that list and with this came an even deeper disintegration of on-the-job relationships. Which one hundred among the more than five hundred B men were on the list? I, for one, experienced a marked increase in isolation. Not only had I been one of the B representatives, there was talk that I was handicapped by having previously held membership in both the Sailors' Union of the Pacific and the United Auto Workers, both of which were said to have leaderships that Bridges held in disrepute for political reasons. As has already been revealed, I did in fact occupy a place on Bridges' list, but in those weeks there was hardly a B man who was not examining his past to find something within it that might now cause his undoing. Given all the unknowns it is doubtful that many were at peace. Rumors went out that several workers had begun to go daily to the offices of the international union and sit hat in hand waiting for an audience with William Chester, a union official, who it was said, had the power to launder them. Even among those who would surely be deregistered, hope existed side by side with despair. Each of us felt that somehow maybe we would make it and we outwardly conducted ourselves in postures of normalcy. There are experiences far this side of "holocaust" which make the ordinary conduct of European Jews about to enter oven compounds absolutely understandable.

On the same day that we eighty-two received deregistration letters, the hostage A registrations were released. The survivors of the "promotion process" entered the union in an atmosphere of defeat. At-

tainment had come without satisfaction. There was a sense that the position they occupied was actually closer to A-minus and was possibly still revocable. It wasn't hard to conclude that anyone could have been among the deregistered if the new and previously unknown set of disciplinary rules had been applied retroactively to his employment record. "If they want to bad enough, they can get anyone."

The men who governed the industry had won an important victory. They had conducted an offensive and not once had their opposition stepped outside the containment of existing collective bargaining relationships. So successful was their strategy that it was not until 1971 that open rank and file resistance to the mechanization concessions, though still in established channels, resurfaced. The rebellion took the form of the longest longshore strike in American history.[4] But the eight years between 1963 and 1971 gave PMA members the time needed for the mass introduction of the container moving machineries that are now being roboticized. In 1964, or one year into that eight year period, the first real victims of longshore automation on the west coast became the plaintiffs in *Williams v. PMA.*

III. The Legal Battle

The Pacific Maritime Association made it relatively easy for us disenfranchised longshoremen to organize. It is probable that most of our motivating anger was directed at ILWU officials, but the employers provided an immediate and practical reason for unification. The PMA, as reported in Part I, had denied our claims to unemployment benefits. In order to appeal that denial we were faced with the necessity of hiring a lawyer. The initial step in our self-organizing drive was accomplished in the lines at the unemployment insurance office on the Monday following the Friday that we were fired. Late in July, after we had exhausted all appeals, approximately thirty of us met in San Francisco at the home of one of our number, Cleo Love. Our informal organiza-

4. Late in 1971, ILWU members voted to strike by a 96 percent majority. After 101 days, a Taft-Hartley Act injunction sent them back to work for the "80 day cooling off period." With that time served, 93 percent voted to resume the strike. The basic goal of the ranks was to eliminate the employer's right to bypass the hiring hall when recruiting steady men for container terminal jobs. They twice rebuked their international president for refusing to negotiate an end to this concession. After 30 more days of picketing they accepted the third contract offer brought before them by Bridges but it too contained the paragraph that had given a large portion of control over hiring back to the PMA.

tion and division of labor needed structuring. We formed the Longshore Jobs Defense Committee (LJDC) and elected a steering committee which included James U. Carter, Willie Hurst, Arthur Jackie Hughes, Willie Jenkins, Jr. and Arthur Winters, with Eathen Gums, Jr. and me as co-chairs. This committee became the core group that held the LJDC together for the next seventeen years.

On that first meeting night, after developing a plan to track down and bring in the others who had been fired, the steering committee was assigned the task of interviewing attorneys to represent us at the unemployment insurance appeal hearings. We could not find a pro-union labor law firm that was willing to consider taking our case. None could afford to participate in a suit against a union. We also found that law firms regularly associated with liberal social reform movements could not conceive of representing anyone against "a progressive union like the ILWU." Finally, our search was reduced to tracking down random leads. We were always treated with courtesy. Many took time out of their busy schedules to listen carefully to our story but candidly explained that a case like ours was outside their area of expertise. Others simply could not afford to take on a case with more than thirty plaintiffs who could pay the needed fees only on a contingency basis. We also met some who felt they could not afford to take on an important segment of the power establishment in the San Francisco area. We could understand how easily we could become a liability to our own counsel.

Within five months after our deregistrations we participated in hearings before California Unemployment Insurance Appeals Board Referee, Donald Gilson. Sidney Gordon, a Los Angeles attorney and high school friend of mine, represented the LJDC's thirty-three members. After hearing fifteen days of argument and testimony from both sides, Referee Gilson ruled that the claimants were "not subject to disqualification," that the employers' account was to be charged and our benefits paid. He had been unable to find any "just cause" for our discharge in the explanation given by the PMA.

In the "Reasons for Decision" section of Gilson's ruling he noted several of the conditions surrounding our deregistration that later caused the federal courts to hear our case. Among them he listed the following: we had been subjected to double jeopardy; the JPLRC minutes for July 16, 1963 contained statements by the union members of the committee to the effect that the discharges had been accomplished by use of a new and previously non-existent set of disciplinary rules applied on an ex post facto basis, and that there was no evidence that

we had left the employ of the PMA on a voluntary basis.[5]

The Gilson decision in May 1964 boosted our morale. We had gone through the long hearing without a traumatic expenditure of energy and had won with relative ease. The facts of the case were still fresh in our minds; recounting the story of our discharges had not yet become routine. The victory raised our hopes for success in upcoming court battles. A month earlier in April 1964, Attorney Gordon had filed a complaint[6] in federal court on behalf of fifty-six LJDC members. It sought relief in the form of job reinstatement as B men, back wages and six hundred thousand dollars in special damages. In addition to listing the PMA and ILWU as defendant organizations, individual defendants were named. Officers of both the employers, association and the union were designated. James Kearney and Harry Bridges were included in the union grouping. While Kearney had tried to save us in his fashion he had also signed the order for our deregistration.

We fifty-six plaintiffs found it difficult to accept the idea that because we were B men at the time of the firings, for legal and technical reasons, we could not seek restitution to jobs that had A status and union membership. The others on the 1959 B List who had not suffered discharge for unjust cause were now secure A men. We had to downgrade our expectations. Victory in the courts could bring only partial relief. Our desperation made that sufficient reason to go on. Then, too, there was no other choice. Even the complaint itself had given us additional tension; our lawyer had not reviewed its contents with us before submitting it to the court.

Shortly after Sidney Gordon filed his second amended complaint with the clerk of the district court, the Joint Port Labor Relations Committee (JPLRC) revealed that they would soon hold a hearing to decide if we should get another hearing. The committee scheduled a second set of appeal hearings to take place in March 1965. Our counsel obtained a restraining order against them but the hearings were conducted even though the order was still in effect. Only one plaintiff appeared, Cleo Love. ILWU counsel Norman Leonard offered to represent him. Love had a heated verbal exchange with Harry Bridges and received yet another affirmation of his discharge. Approximately

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5. *In the Matter of: James U. Carter, California Unemployment Insurance Appeals Board Case Number SF-3033,* San Francisco Referee Office, May 14, 1964, at 11-14.

6. Williams v. Pacific Maritime Ass'n, No.42284 (N.D. Cal. filed April 14, 1964).

six months later the Joint Coast Labor Relations Committee (JCLRC), on which both PMA President Paul St. Sure and Harry Bridges sat, held a hearing on the basis of the previous hearing and found us guilty as charged.

Our case experienced its first full scale internal crisis in mid-1965. The third amended complaint that had been submitted to the court on our behalf also failed to make a clear statement of our case. Equally disturbing, Gordon once again made a series of statements about the nature of the discharge action without discussing them or his basic theory of the case with us. Frictions grew all the more rapidly because several of the more needy among us were behind in their monthly payments to Gordon; payments were being accepted by him without regularly issuing receipts; and we had not yet formulated a method of raising monies from outside sources. After a disturbing separation from Gordon by all but three of us, the group once again began looking for legal representation. Gordon took action to garnish the wages or attach the belongings of over half of us. We then hired an attorney who specialized in matters of this sort and the harassment ended.

We were absolutely broke, but had recently armed ourselves with several hundred reprints of a two-part article about our case which had appeared in 1964.[7] By using it as a way of introducing ourselves, it became possible to build a special support group of prominent public citizens under the auspices of the Workers Defense League (WDL) of New York. It was then headed by the renowned labor-civil rights attorney, Rowland Watts, and Robert Joseph Pierpont. With the special help of the late Paul Jacobs, labor and anti-nuclear journalist, the LJDC-WDL Defense Committee was put together. Jacobs got Bayard Rustin of the A. Phillip Randolph Institute and organizer of Martin Luther King, Jr.'s March on Washington to co-chair the committee with Michael Harrington, author of the epochal book, *The Other America*. A dozen more were added to the committee's roster including novelists Harvey Swados (now deceased); Herbert Gold; Nat Hentoff; Julius Jacobson; Rev. William Shirley; Phillip Selznick; Daniel Bell; the late Norman Thomas; Herbert Hill, then Labor Secretary of the NAACP; Norman Hill, then national secretary of CORE; Herman Benson, founder of the Association for Union Democracy (AUD); and Gordon Haskell, then a full time official of the ACLU.

The WDL provided us with the services of Irving Thau of the New

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7. Weir, *The ILWU: A Case Study in Bureaucracy* I, II, 3 *New Politic* (Winter, Summer 1964).

York and federal bars and famed civil rights attorney Francis Heisler. Thau came to San Francisco and hired Arthur Brunwasser as co-counsel. Together they filed a fourth amended complaint. It sought relief in two forms; job reinstatement as B men and payment of all wages lost. The late Judge George B. Harris was assigned to our case. He ruled against giving us a trial. He indicated that our complaint had not established a solid argument for trial in civil court and that the National Labor Relations Board (NLRB) was the appropriate agency to approach for relief.[8] In 1967, the United States Court of Appeals for the Ninth Circuit in San Francisco remanded our case back to the court of Judge Harris for trial. An appeal, written by attorneys Brunwasser and Thau, had successfully turned the tables. Ninth Circuit Judges Pope Hamley and Merrill gave clear instruction to the lower court:

> It should be noted also that the appellants assert the complete invalidity of the so-called new rules. Some of the affidavits filed on behalf of the defendants purport to set out what these new rules were. But, if there were an agreement to such rules, they were not adopted in accordance with the requirements of the basic collective bargaining agreement which provided in Section 22: "No provision or term of this agreement may be amended, modified, changed altered or waived except by written document executed by the parties hereto." An examination of the text of the so-called new rules discloses that they do not cover or authorize de-registration of Class B longshoremen; they deal only with the requirements for promotion from class B to A. . . .
>
> Some of the affidavits disclose the powers of the joint committees, referred to, and they indicate the manner in which the plaintiffs became registered and they show that the joint committees found against these plaintiffs and ordered them de-registered. But the basis of the complaint is that the union representatives on the joint committees should not have taken such action in that by agreeing thereto they had failed in their fiduciary duty to all longshore employees.
>
> As indicated above, the complaint alleged that these plaintiffs were in good standing, were guilty of no current infractions, had corrected all past violations of rules, and were entitled to the assignment for work. Nothing in any affidavit negatives the allegation

8. The ruling was preceded by a hearing on our complaint before the court. Our former counsel, Sidney Gordon, was seated at the defendants' table conferring with the PMA and ILWU legal staffs. We never did learn the precise reasons for his presence on that day.

> these plaintiffs were arbitrarily and capriciously being penalized for conduct that was not ground for de-registration at the time the acts were committed; that the de-registration was a retroactive application of alleged violations of invalid rules. Furthermore, many of the assertions made in these affidavits are not entitled to consideration under Rule 56(e) which provides that affidavits must be made on personal knowledge, and that the affiant is competent to testify to the matters stated. None of the affiants would be competent to say whether any of the plaintiffs were guilty of any misconduct or rule violation, or that the action of the union members of these joint committees was anything other than a disregard of the union's duty of fair representation.[9]

In the process of instruction, the Ninth Circuit's remand order cited the precedent set earlier in the year by the United States Supreme Court's *Vaca v. Sipes*[10] decision:

> The Argument of the Supreme Court is a very cogent one. For instance, the Court noted that the Board's general counsel had unreviewable discretion to refuse to institute an unfair labor practice complaint. Therefore the injured party having a valid claim based on denial of fair representation could not be assured of a remedy if the courts were deemed ousted of their traditional jurisdiction in such cases. At any rate, this reason given by the trial court for denying jurisdiction is demonstrably wrong in view of Vaca.[11]

The employers and the union appealed the Ninth Circuit's reversal and remand of Judge Harris' summary judgement against us to the Supreme Court. The high court refused to review their appeal.[12] Despite our victory at this point, our opposition was soon able to frustrate again our efforts to obtain a trial. Shortly after we organized the LJDC-WDL Defense Committee for the purpose of making our case known to the public and raising monies to cover legal costs, Harry

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9. Williams v. Pacific Maritime Ass'n, 384 F.2d 935, 939 (9th Cir. 1967).

10. 386 U.S. 171 (1967).

11. Williams v. Pacific Maritime Ass'n, 384 F.2d at 937-8. Five of the men fired in 1963 had taken their cases to the NLRB. A local San Francisco trial examiner Herman Marx, ruled that their deregistrations were invalid and that they should be returned to their jobs as B men. On December 5, 1965, John H. Fanning, Gerald A. Brown and Sam Zagoria, as general counsel for the NLRB, reversed the Marx ruling in favor of the PMA and ILWU. *Accord*, Pacific Maritime Ass'n (Johnson Lee), 155 NLRB 1231, 1234, (1965).

12. Williams v. Pacific Maritime Ass'n, *cert. denied*, 390 U.S. 987 (1967).

Bridges sued most of the committee's members for libel. Bayard Rustin was particularly singled out. The action cited a written appeal for funds sent out by the committee mentioning Bridges' role in the discharges. The suit was withdrawn in 1969, less than a week before it was to go to trial.[13] It cost us a great deal. Time and serious illness had elminated attorneys Thau and Heisler from participation in our case. For some time Arthur Brunwasser had been acting alone on our behalf and the libel suit made it impossible for him to devote time to the main case. In 1965, all the plaintiffs signed individual contracts with him. He was to receive payment for his efforts only if we won. In the interim we were to pay all legal fees and expenses. In 1969 he had already worked for us for four years without compensation. The libel action had cost us more than a year's time at that point for it would be three years before we would again be able to raise the money necessary for trial in the district court.

In the years just prior to our 1974 trial before Judge Harris, our case came under a unique handicap. The attorneys for the PMA and ILWU went before the court and were successful in getting an order that struck the names of individual defendants from our complaint. At the same time the international union established that ILWU Local 10 was a third responsible party of their side. Thus the membership was obligated to pay a share of the legal costs incurred, and if we prevailed, a portion of the settlement. We not only needed the support of the rank and file upon our possible return to the docks, but during the period of legal battle as well. Additionally, a majority of us still had relatives as well as friends working the ships. This all added up to increased strain in the case. Before the litigation was over, longshoremen in locals up and down the west coast would be assessed for the legal costs incurred by the union defendants because of the Bridges' leadership.

Time and polarization of differences on national political issues in the late 1960s and early 1970s had caused a disintegration within the LJDC-WDL Defense Committee. It was reorganized. We got James Baldwin, Kay Boyle, Staughton Lynd, Phyliss Jacobson, Hal Draper, Clancy Sigal, Dan Georgakas, Stanley Aronovitz and others to fill the vacanices created by the deaths of Norman Thomas, Harvey Swados, and San Francisco civil rights leader Dr. Thomas Burbridge. A new fund drive was successful. The time for trial preparation had arrived.

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13. *See* Weir, *The Retreat of Harry Bridges,* NEW POLITICS (Winter 1969) *reprinted in* abridged form in AUTOCRACY AND INSURGENCY IN ORGANIZED LABOR (Hall ed. 1972).

Early in the long depositions period, the book, *Harry Bridges: The Rise and Fall of Radical Labor in the United States*, was published and immediately received prominent display in San Francisco book stores. Its author, Professor Charles Larrowe of Michigan State University, was already considered an authority on the ILWU because of an earlier book comparing daily longshore hiring systems on the east and west coasts of the United States.[14] The later book on Bridges contained a ten page discussion of our case. Despite Larrowe's statement that I had been victimized by Bridges for political reasons, the entire section was filled with part-truths that made it totally misleading, a tool that could only misinform people who had no way of checking the accuracy of his reporting. Worst of all, he dressed his discussion of the other men who were fired in just enough fact (given him by ILWU staff) to give it the ring of an informed source. His assessment of the firings ended with the sentence, "[i]n almost all of these cases, the men admitted the charges and accepted the verdict."[15] Regardless of intention, the statement that any of our men confessed to the allegations against them fails to reflect reality. In truth, some of our men, for example, had not only admitted late payment of dues, but had confronted their accusers with a counter-offensive: "How is it that lateness of dues payment for which I have already paid the fine has suddenly become a rule, a rule that can be retroactively applied and a rule whose violation brings unappealable discharge?"

Let us take another example, that of Willie Hurst. During his first year of employment on the waterfront a banana dock walking boss fired the entire gang in which Hurst was working, for drinking on the job. Before being cited by the Port Labor Relations Committee, Hurst went to Local 10 president James Kearney and explained that the gang had been fired for the remainder of the day because of the drunkenness of one man. Kearney easily confirmed that Hurst was a lifetime "teetotaler," but advised him not to testify to the facts when the case was heard. If Hurst were to accuse the particular A man in question of being drunk, and the cause of the firing, he would probably never get promoted to A status. Kearney was right. Hurst was given the penalty for first offenders, thirty days off the job without pay and was told to avoid further violations. He served his time and heeded the warning. Almost three working years later, in 1963, he was penalized a second

14. C. P. LARROWE, THE SHAPE-UP AND THE HIRING HALL, (1955).

15. C. P. LARROWE, HARRY BRIDGES: THE RISE AND FALL OF RADICAL LABOR IN THE UNITED STATES, 364 (1972).

time for the same incident, but this time he was given the sentence reserved for three time offenders, discharge. Yes, in a sense he did admit the charges, but only if one is operating without regard to context. And, in no way did Hurst or the others accept the verdict. Larrowe's book served to obscure the entire question of the new rules and the escalation in the punishments connected with old rules often twice applied.[16]

Our federal case, *Williams v. PMA,*[17] came before the court sitting without jury on January 14, 1974, and continued until July 3rd, with more than sixty days of live testimony. The trial revealed a number of facts in the case that startled us. One such example occurred when PMA officials testified that the special rules by which we were discharged did not originate in any of the joint PMA-ILWU committees, but in a separate session of top officers and legal staff. It was then that testimony revealed how the special rules were not adopted by the Joint Coast Labor Relations Committee until after the appeal hearings in July 1963, and remained in effect only a few short weeks. To this date they have never been revived.

Judge Harris sat through testimony of this sort as well as routine procedural matters without any reaction. We hoped that this was part of his professional demeanor but it was about this time that a number of the plaintiffs began to wish that the case had been heard by a jury. It also bothered us that Judge Harris seemed to be in awe of head ILWU counsel Richard Gladstein. Harris had been one of the judges involved in the early post-World War II (McCarthy) era during which the federal government made several "witch-hunt" attempts to deport Harry Bridges. Gladstein was Bridges' main counsel when the bulk of San Fransicso's power elite still considered the ILWU president a threat. We plaintiffs wondered what effect the past might have now that Bridges was in great favor as a "labor statesman" and member of the Port Commission.

For me, one of the greatest shocks at trial was supplied by the long opening statement given by head PMA counsel Richard Ernst. The opening statement of our lawyer, Arthur Brunwasser, had focused on

16. For further detail see the review of Larrowe's book by Clancy Sigal, then a stranger to the case, in The New York Times Book Review, January 7, 1973, at 3; the discussion by Bridges, The New York Times Book Review, February 18, 1973, at 32; followed by my own discussion, The New York Times Book Review, May 13, 1973, at 34.

17. Civil suit No.42284 in the court of Judge George B. Harris.

the specifics of the discharges and the absence of all fairness in the process. Ernst laid a foundation for the case on grounds vastly different from Brunwasser's. He took an openly political approach. He recounted how, in 1919, the waterfront employers had broken the waterfront unions, initiating a fifteen-year period of oppressive experience by longshoremen. The strikes of 1934 re-established the union and ushered in a fourteen-year period of militant confrontation between the union and employers. After the strike of 1948, Ernst pointed out, the employers embarked on the "third period." They saw that the union was maturing and so began an era of increased trust and collaboration. Around 1958 they felt that the union had made so much progress that its members could participate in the process of selecting new men for the industry. Four years later the witnessed development of maturity within the union caused the employer to involve the union in the firing process as well. He then pointed out that we plaintiffs were the first product of both maturity-proving developments.

Ernst's opening statement developed full direction on January 23 and continued, with routine interruptions, over several days. He made the logic of his case absolutely explicit; if the judge ruled for the defendants he would be in the company of a long list of great social engineers such as Wayne Morse and Clark Kerr who helped structure an intricate and operational working arrangement between a large employer and union in a vital industry. If, on the other hand, the judge ruled for the plaintiffs he would be destroying labor peace. Contrary to my first impression, the counsel for the PMA was not wide of the mark, he was right on it. He was operating on the premise that had increasingly directed the development of labor policy in all three branches of our government since passage of the Taft-Hartley Act: the promotion of "labor peace" through containment of the work force via collaborative contractual arrangements which essentially substituted arbitration for any concerted action by the workers. According to Ernst, our deregistrations symbolized such an accomplishment and it should not be tampered with.

The last shocking segment of the trial, possibly for all participants, came on the last day testimony was presented. Attorney James A. Carter, former PMA lawyer and legal staff member of the Port Labor Relations Committee (JPLRC) at the time of the 1963 deregistrations, gave the following testimony under cross examination by Arthur Brunwasser:

> I had heard[18] that Mr. Weir was one of the persons that was being deregistered; that it was very definite that he should be deregistered; and there was simply no doubt in my mind, and I believe in the minds of the other people who worked on the case, that the feelings were very strong that Mr. Weir should be deregistered. . . .
>
> Well, what I heard was that Mr. Weir was opposed to the M and M agreement, that he wanted to make work for people and stop the use of labor saving devices and things; that he was interested in more longshoremen, et cetera; and that that ran counter to the prevailing views of Mr. Bridges. I think it was more—what I heard was a philosophical thing—presumably, this lost case had been made public—that he was philosophically opposed to the concept of M and M; that he was of the old fashioned union school that felt you ought to have a lot of people out three working, and you shouldn't have labor saving devices.[19]

Finally, and only as the trial neared conclusion, the court got its first opportunity to understand not only the major reason behind the discharges, but why we were being pursued with such hostility. Earlier in the trial the court had heard testimony by Curt Johnston, then president of ILWU Local 13 (Los Angeles), that a former San Francisco employee, Robert Hall, had told him how "eighty-two had been fired just to get Weir." Hall subsequently testified that Johnston had fabricated the story. Later toward the end of Carter's testimony, an explanation very similar to Johnston's was offered:

> But what I did hear was that the—that a decision was made at a very high level—and those words may not have been used either—but I can read. . .shorthand—but that a decision had been made to deregister Mr. Weir; and that in order to facilitate that, I suppose, it was decided to deregister other people at the same time.[20]

We had heard this theory several times, twice directly, from ILWU staff employees who were disillusioned with Bridges, but because they were still in the employ of the union their depositions proved

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18. It had been established in earlier testimony that the source was PMA staff representatives with whom Carter was working at the time.

19. *Williams v. Pacific Maritime Ass'n, Reporters Partial Transcript,* July 3, 1974, at 10-11, 12.

20. *Id.* at 52.

fruitless. Nevertheless, to have heard the theory early on had value. It forced us to think through our own analysis of the ILWU-PMA strategy with greater care. There was probably no way that we would ever be able to prove or disprove the theory but its persistence showed us the potential for vindictiveness with which we were dealing. We agreed with the political analyses put forth by Herman Benson and Gordon Haskell of the Association for Union Democracy: Bridges represented a highly developed bureaucratic conservatism that retaliated full force against even the slightest potential of opposition, no matter how far in the future it might take to materialize.[21]

On August 31, 1975, Judge Harris ruled for the defendants. The defendants had won based on the argument that B men were probationary employees and not union members. Yet, Bridges' handpicked successor as president of the ILWU, James Herman had become president of an ILWU local union in the 1960s as a B man. In a post-trial meeting for the plaintiffs our attorney told us that the judge had not even written the decision. Instead, he had taken the closing brief of PMA counsel Ernst, transferred it to court stationery and applied his signature. The content of the decision offered an even more detailed interpretation of the political conflict on the San Francisco waterfront:

> 43. Factions developed within Local 10 on the subject of promotion of the limited registration Class B men. One group included Selden Osborne, Asher Harer, Hal Yanow, Frank Stout, James Kearney and others; it favored the granting of union membership to the limited registration class B men and their dispatch with the fully registered Class A longshoremen, even though this would be in violation of the contract and the law. Another faction included Harry Bridges, William Chester, Robert Rohatch, Tommie Silas and others; it was of the opinion that the union should comply with the contract with the PMA and promote only on the basis of joint action between the ILWU and the PMA.[22]

There was a quarter truth to Ernst's (Judge Harris') interpretation of the political fight within Local 10. The first group had all individu-

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21. H. Benson, *Harry Bridges' Own Witch-Hunt*, 13 UNION DEMOCRACY IN ACTION, (Sept. 1964); Haskell, review of Charles P. Larrowe's biography of Harry Bridges, 4 UNION DEMOCRACY REVIEW, (Summer 1973).

22. Williams v. Pacific Maritime Ass'n, Proposed Findings of Fact and Conclusions of Law Lodged by Defendants, PMA, ILWU, Local 10. Civil No.42284 GBH at 14-15 (Mimeograph of original).

ally, at one time or another, taken the floor of a union meeting to oppose our deregistration but they had never operated as a faction. It had been many years since any who opposed Bridges had felt secure enough to organize against his ideas in concert. It was rather shrewd of Ernst to wait until the very end to offer this interpretation and thus leave no chance that our side might begin to dispute his distinctly political interpretation.

After the setback at trial, we once more appealed to the Ninth Circuit Court of Appeals, with very different results. The political climate in the entire nation had changed markedly in the decade since the appellate court had ordered that we be given a trial. Oral argument on our appeal took place on February 5, 1979. To get there had taken yet another fund drive with donations from many well wishers. Once more we filled the court room to capacity but it did not appear to have any visual effect on the judges.

The argument took little more than two hours. We left with an uneasiness we could not shake. We felt it would be impossible for the judges to do ample research in the more than twenty cases of printed matter which constituted the record in our case. Even more disturbing, we had not heard them ask what we considered the substantive questions in the case.

Judges Duniway, Kennedy and Bonsal handed down their opinion a year and two days after taking argument.[23] Their conclusion was,

> We believe that the district court erred in concluding that appellants failed to exhaust required grievance procedures. We nevertheless affirm on the merits because appellants have not demonstrated that PMA or ILWU or its constitutent local breached either a duty of fair representation owed to appellants or the terms of the Pacific Coast Longshore Agreement.[24]

We were sixteen years down the road when hit by this decision. No longer were we in awe of the court. Underneath their robes these three men wore pants that they got into one leg at a time just like other mortals. The gap between the letter of the law and the way life is actually lived was so wide for them that an "Alice in Wonderland" logic dictated the terms of their decision. They agreed that the ILWU and the PMA had denied us due process, but ruled there was no evidence

23. Williams v. Pacific Maritime Ass'n, 617 F.2d 1321, 1334 (9th Cir. 1970).
24. *Id.* at 17.

that the union had failed in its duty to represent us fairly. Yet due process is the forum or vehicle that makes representation possible. The two are totally interdependent. There cannot be one without the other. For the justices, unjust means could somehow be used to arrive at a just end.

From beginning to end, a pivotal area of the law which was applied to our case was whether or not the acts of the defendants had been legitimized by the collectively bargained agreement. In 1967, one of the major reasons for the Ninth Circuit's reversal of Judge Harris' summary judgment against us was that the new rules used to discharge us had not been arrived at via the collective bargaining process. Contrary to this, Judges Duniway, Kennedy and Bonsal held that the new rules had been negotiated into existence by the two parties on the Joint Port Labor Relations Committee (JPLRC). The July 16, 1963 minutes of the JPLRC cited earlier here were still among the case exhibits. They revealed that the union members of the committee, who would have had to be half of the negotiating effort, were protesting our discharges because the new rules had not been adopted by the bargaining process.

In an example of "doublethink," the decision of the Ninth Circuit also held that the new rules were actually not new at all. The court observed that we appellants knew, for example, that our "dues" should be paid on time and that fact was not changed by the creation of a new, additional and maximum disciplinary penalty. In fact, the addition was legitimate for them because the well known Section 9 of the 1958 rules covering deregistration contained an eleventh "or, for any other cause" rule.

The underlying rationale of the judges on this aspect was not hard to determine: the new mechanized technology that was being introduced to the industry in the early 1960s demanded the creation of a "permanent work force" composed of high caliber individuals; by applying the new rules (or penalties) the employer and the union were setting the standards necessary to the needs of the new era; the old era in which all jobs went through the hiring hall was now in the past; the deregistration of people who had a propensity for unreliability represented an imperative updating whose correctness and success was indicated by the fact that eighty percent of the 1959 B men met the higher standards. The final block of reasoning in the stone wall erected against us by the courts was tragically laughable: because, in a hostage taking operation, a large number escaped being taken showed them that none of those taken were hostages.

On the surface, the court was refusing to see that our discharges were part of a conflict but, below the surface, other factors were at work. The unjust decision of the Ninth Circuit unknowingly gave support to Professor James B. Atleson's thesis on the values underlying decisions on labor cases by the courts, "[t]he belief in the inherent rights of property and the need for capital mobility, for instance, underlie certain rules, and some decisions turn on the perceived superior need for continued production or the fear of employee irresponsibility."[25]

We appealed the decision to the Supreme Court. There were two court decisions against us and only a narrow margin of hope, but the majority of the plaintiffs needed their jobs back as much then as we did the day we were fired. Unfortunately, though not surprisingly, it had become harder to raise the money to cover legal expenses and, by 1980, six of the plaintiffs had died. Others had moved in order to obtain employment. Some, like Manual Nereu, were as far away as Saudi Arabia. Mario Luppi had returned home to his family's village in Italy. I had been living in the Los Angeles harbor area for five years and had resided in Illinois during the previous eight years. Communication was more and more difficult to sustain but the necessary mobilization was made easier when Teamsters for a Democratic Union, Independent Skilled Trades Council, Union Women's Alliance to Gain Equality, *The Bell Wringer,* National Labor Law Center of the National Lawyers' Guild and Association for Union Democracy offered to file a friend of the court brief on our behalf.[26]

The brief authored by Burton Hall stimulated new interest. It gave added emphasis to the arguments made by Attorney Brunwasser. For example, it showed that the written job dispatch rules provided us until the day of our discharge ended with the capitalized statement: "THERE ARE NO OTHER RULES." The brief by attorney Hall also contained what for us was a new idea; the union's agreement to deregister us was a bill of attainder:

> In 1963, at the time that Local 10 and ILWY agreed to the new "standards" and agreed, also, to deregister those "B men" who failed to meet those "standards" because of conduct prior to their

25. J. ATLESON, VALUES AND ASSUMPTIONS IN AMERICAN LABOR LAW, 2 (1983) (Atleson is a professor of law at State University of New York, Buffalo).

26. Burton H. Hall, Attorney for Proposed *Amici Curiae*; of counsel, Staughton Lynd.

> adoption, the identities of those persons who would thereby be de-registered were either known or were easily ascertainable from records in the bargaining representative's possession.
>
> Thus it was known or could easily be learned from the records that Graves had been found guilty of an instance of intoxication in 1960 and had been suspended for 30 days as punishment. It was known or could easily be learned from the records that Cafeterio had, however innocently, committed a Low Man Out violation in 1962 of more than ten hours by failing to add hours to his time for his unavailability on Sunday, August 12.
>
> The decision to deregister the class of persons who were shown by the records to have committed any violations of the "standards" was, in short, a bill of attainder.[27]

The Supreme Court, in its October 1980 term, denied all briefs filed for the plaintiffs. We were finished. It felt just that abrupt. The case had been a central activity half our adult lives and a period of adjustment was forced upon all participants.

IV. Epilogue

The previous sections represent only one small portion of the *Williams v. PMA* story. The events profoundly affected all of our lives. Some among us were more fortunate than others in rebuilding work careers and keeping our families together after the discharges. The story of every man and his family deserves telling and if told would reveal that anguish can develop strength as well as diminish it.[28]

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27. In the Supreme Court of the United States, October Term 1980, Williams v. Pacific Maritime Ass'n, 617 F.2d 1321 (9th Cir. 1980), *cert. denied*, 449 U.S. 1101 (1981). Motion of Teamsters for a Democratic Union for leave to File Brief as *Amici Curiae* in Support of Petition for Certiorari and Brief of *Amici Curiae* in Support of Petition for Certiorari, p.16.

28. The names of all plaintiffs are: George R. Williams, William Jones, Paul May, Eathan Gums Jr., Edgar J. Dunlap, Walter L. Robinson, Frank Nereu, Louis T. Lacy, Leroy J. Provost, Roger W. Fleeton, Robert E. Birks, Anthony Melvin Jr., Oliver Geeter, Antonio S. Cafeteiro, Edward Reed, Albert W. Roberts, Percy Fountain, William J. Hurst Jr., Willie C. Merritt, Mack Hebert, Manuel Neureu Jr., Arthur G. Winters, Frank Giannino, Stanley L. Weir, Fred Hayes, Willie J. Whitehead, Rhody Adams, Mario V. Luppi, Arthur L. Hughes, Jeremiah Richards, Cleo Love, Louis J. Richardson, Charles J. Johnson, Reginald W. Saunders, Willie Jenkins Jr., Willie D. Palmer, Conway T. Hudson, John T. Leggett, Alfred Straughter, Thomas Nisby, Timothy E. Carter, James U. Carter, Melvin Kennedy, Henry Imperial, James Lang-

We surviving plaintiffs make no claim to objectivity, and that applies as well to the opinions expressed in this article. Like all who are party to a violent fight, with many casualties, we will never cease to be partisan. The human costs have been high in many ways. One of the most oppressive aspects of our experience with the law was our inability to afford the financial costs. In our view, any legal action in which the attorneys are to be paid on a contingency basis is in deep trouble if it lasts more than a few months. A case with the workload the size of ours quickly became destructive to our lawyer's personal life and professional image. It is true that in the beginning there was gratification by the very nature of the case. But we witnessed the coming of those times when other attorneys would loudly call across court building lobbies with derisive guffaws: "Hey, you still have that big five (ten, fifteen) year old law suit?" We watched as our attorneys overworked without pay. The greater their resentment and our guilt, the more we felt like charity cases and lost client control over direction of the suit. This resulted in the destruction of friendships and the development of deep doubts.[29]

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ford, Johnny J. Cherry, Ellis E. Graves, James Green, Ulysses Hawkins, Theodore Tolliver, Lawrence Johnson, and Herman Crawford.

29. Over the years substantial changes were made in the theory of our case and its presentation to the courts. The shift was away from a focus on the political motivations which had led to the discharge, to a concentration on the lack of just cause—yes, we had been wronged, but an analysis of why was missing. This weakened and undercut the case of the plaintiff who had most been involved in the politics of the industry as an elected representative of the B men, myself. In turn, all of us felt that this served to undercut the entire case. The change became documented in our appellants reply brief to the Ninth Circuit Court: "Similarly, defendants set up a 'strawman' in the guise of one of the fifty-one of the plaintiffs, Stanley Weir, and emphasize his philosophical musings of defendants' intention." Williams v. Pacific Maritime Ass'n, 617 F.2d 1321 (9th Cir. 1980). Appeal from a Final Judgment of the United States District Court of the Northern District of California, Appellants Reply Brief No. 77-1398, at 4, served Oct. 11, 1978.

The "philosophical musing" referred to an explanation of how the fight of the B men for union representation, while not an organized factional war, was automatically antagonistic to the mechanization program of Harry Bridges and his eager acceptance of the employers' automation plans.

When the time came for filing an appeal for certiorari with the United States Supreme Court we gathered together closely once more in the Bay Area. The LJDC steering committee was again able to hold meetings. About the time that the Teamsters for a Democratic Union began to develop a brief in support of the issues in our case, and in reaction to criticism from long time supporter Sam Bottone, we again began to act like full fledged clients. We realized it was our last shot and that we would have to

There are several areas in which some generalization of our experience can be made. We would not have filed suit in 1964, had we known that the action would take so many years. At the same time, by 1964, the only alternatives to filing suit was to walk away in submission, and that was unthinkable. That we put up a good long fight is a source of pride. It is gratifying to hear, as we still do from former coworkers on the front, that the men of the four B lists recruited after our discharge got much better treatment from the ILWU and PMA because of our suit. Another outbreak of resistance after ours, especially a second lawsuit, might have triggered alliances and the reversal of bureaucratic victories.

A statement commonly heard among LJDC veterans is that we stuck together through it all, and, as a result, we formed unusually strong bonds of friendship and experienced considerable personal growth by getting an inside look at the way law actually works in our land. We have seen that labor law is a special segment of the total body of American common law. In worker-employer-union conflicts, the worker often does not have due process protection as guaranteed by the Constitution and Bill of Rights. Labor law legitimizes the loss, makes it legal and provides a framework for the application of private government in the workplace by employer rules as modified by employee resistance.

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live with the outcome every bit as much as our attorney. We asked for a meeting with counsel. After several refusals to even entertain the idea of meeting with us to discuss any questions we might have, we sent a formal request, by letter, for a meeting. After all briefs were filed with the court, Attorney Brunwasser sent the committee a twenty-one page letter with a copy to every plaintiff. It attacked me and made strong inference that I was guilty of the charges alleged by the employer and union, explaining that while this had been known for some time it was not brought out because I was the best fund raiser in the case. Prior to receipt of the letter not a particle of distrust had ever entered my mind. We of the steering committee had always played the role of liasion with and defender of our attorney in relation to the rest of the LJDC membership. The other members of the steering committee immediately responded with a letter that rejected any validity in his accusations. In turn, they too were cut off as if for increased disloyalty and personal affront.

The problem between us clients and our attorney of record got escalated, very probably without hope of solution, and will ever remain a source of grief and loss. We have no way of making an accurate unbiased analysis of its causes. But as we look back to learn what we might have done differently, one thing is certain: over the years we should have given more recognition to the labors of Arthur Brunwasser while he was in the process of providing them. Acknowledgment is an essential form of nutrition. Shakespeare reminds us by exaggeration as the good Kent responds to Cordelia in *King Lear*, "[a]cknowledged is o'er paid."

I agree with the idea expressed in varied contexts by labor attorney Staughton Lynd that the filing of a lawsuit is not by itself an effective way to fight and often creates an artificial context in which facts become distorted.[30] It is more effective to use the lawsuit as a back-up action and only as a last resort.[31] We could have pursued a return to our jobs far more effectively with continued organizational support and with some form of political-organizational support from the general public, particularly in the Bay Area community. We feel certain our story would be quite different if we had recevied even the most indirect support from the membership of ILWU Local 10, and especially if there had been the development of open resistance to containerization. In the absence of direct support of any kind, we needed far more backing from public sources than we were able to generate and maintain.

The availability of the documents in our case to public scrutiny and research is a positive development.[32] Still unnoticed anywhere, for example, is the fact that by simple self-interest and self-preservation B men became critical of Harry Bridges because of the conservatism of his leadership and his eager acceptance of the employers' new technology program. Quite logically, those who cast their lot with the B men or came to their defense both from inside the industry and from the public, were persons who were viewed as having a more radical world view than Bridges; probably a very threatening experience for a labor official whose entire method of operation historically had been based upon presenting himself as a leftist.

The largest and most important part of the fight continues on the job in every port. More than half the 15,000 registered longshore jobs that existed in 1963 have been automated out of existence. We were the first mortalities in an ongoing liquidation. There is not a day in

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30. LYND, THE FIGHT AGAINST SHUTDOWNS: YOUNGSTOWN'S STEEL MILL CLOSINGS 146-7 (1982).

31. *Id.*

32. The Office of the Clerk of the United States District Court, Northern District of California, in San Francisco provides access to case files stored in San Mateo, California. Taped interviews of approximately thirty of the deregistered longshoremen conducted by Elinor Randall Keeney will soon be deposited with the Regional History Office of the Bancroft Library, University of California at Berkeley. This library contains extensive interviews with the late Paul St. Sure, former PMA president. An interview of Stan Weir by Paul Buhle is on file in the Oral History Department, University of California at Los Angeles. Numerous documents on this case collected by the plaintiffs have been archived in the library of the Center for Socialist History, Berkeley, California.

which the remaining seven thousand rank and file west coast dockworkers do not have to resist. It is they who need allies, primarily in other industries and unions, but within the informed public as well. Plans for the "Second Containerization Revolution" by computer controls are emerging from the drawing boards in greater numbers. The number of options available have diminished for both sides, particularly for the workers, who now have much less faith in established grievance solution channels.